

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

SEAN COLEMAN,

Case No. 1:05-cv-700

Plaintiff,

Weber, J.

Black, M.J.

vs.

WARDEN MICHAEL P. RANDLE, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION<sup>1</sup> THAT DEFENDANTS' MOTIONS TO DISMISS  
FOR LACK OF PROSECUTION (Docs. 20 & 22) BE DENIED**

This civil action is currently before the Court on defendants' motions to dismiss for failure to prosecute pursuant to Rule 41 (b) of the Federal Rules of Civil Procedure (docs. 20 & 22) and plaintiff's responsive memoranda (docs. 21 & 23).

On October 12, 2006, the Court granted plaintiff leave to proceed *in forma pauperis*, ordered plaintiff to serve all future documents upon defendants or their attorney, and to promptly inform the Court of any changes of address. (Doc. 16.) Shortly thereafter, on October 24, 2006, the Court ordered plaintiff to provide the Clerk with a copy of the summons for each defendant so that service could be effectuated. (Doc. 18.) Plaintiff did not timely with the Order, and defendants filed the instant motions to dismiss for lack of prosecution.

In his response to defendants' motions, however, plaintiff asserted that he was in transit as a result of his criminal direct appeal (Case No. 04-4393) and did not receive the October 24, 2006 Order. (*See* Docs. 21, 23.) Accordingly, plaintiff was granted an additional 30 days to provide the Clerk with a copy of the summons issued to each defendant in this case so as to allow the United States Marshal to effectuate service on the named defendants.

On November 21, 2007, the Clerk received summons issued to defendants Guinan, Randle, and Slaton. Accordingly, in light of plaintiff's timely compliance with the Court's November 13, 2007 Order, the undersigned respectfully **RECOMMENDS** that defendants' motions to dismiss for lack of prosecution (docs. 20 & 22) be **DENIED**.

Date: November 27, 2007

s/Timothy S. Black  
Timothy S. Black  
United States Magistrate Judge

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<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.



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**NOTICE**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **TEN (10) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **TEN (10) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981).